

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

FEB 23 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2006-0284-PR
	)	DEPARTMENT A
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
EDWARD DE LA CRUZ,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20031382

Honorable Nanette M. Warner, Judge

REVIEW GRANTED; RELIEF DENIED

Edward de la Cruz

Florence  
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Petitioner Edward de la Cruz pled guilty to aggravated criminal damage, a class six felony. The trial court sentenced him to 3.75 years' imprisonment, the presumptive sentence for this nondangerous, repetitive offense. De la Cruz filed a timely notice of post-conviction relief, and the trial court appointed an attorney to represent him. After counsel notified the court he had reviewed the record and found no "tenable issue" to raise, de la

Cruz filed a pro se petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., setting forth the issues as follows: (1) ineffective assistance of counsel in sentencing, (2) defense counsel's failure "to exercise [his] constitutional right to be found not guilty," and (3) prosecutorial misconduct and imposition of excessive or cruel and unusual punishment. In a detailed under advisement ruling, the trial court fully explained its reasons for finding that each of these claims lacked merit and dismissed de la Cruz's petition for post-conviction relief. De la Cruz has filed this petition for review from that ruling. We will not disturb a trial court's ruling unless we find a clear abuse of discretion. *See State v. Mata*, 185 Ariz. 319, 331, 916 P.2d 1035, 1047 (1996).

¶2 De la Cruz was indicted for third-degree burglary, possession of burglary tools, and aggravated criminal damage. A jury trial proceeded in September 2004, but the jury was unable to reach a verdict on the charges of burglary and aggravated criminal damage. De la Cruz was acquitted of possession of burglary tools. He subsequently entered the guilty plea that resulted in the conviction at issue in this Rule 32 of-right proceeding. Nonetheless, de la Cruz devotes his entire argument in the petition for review to the trial court's rejection of his claims of "prosecutorial misconduct," which derive from allegations that the prosecutor elicited "false testimony" from two witnesses at trial. Although de la Cruz submits several exhibits in an effort to substantiate his claims, they are irrelevant. Whatever did or did not occur at trial did not result in the conviction at issue here. That conviction is based upon his guilty plea. We therefore agree with the trial court's determination that his claims of

prosecutorial misconduct did not present any material issues of fact or law that would have entitled him to relief. *See* Ariz. R. Crim. P. 32.6(c).

¶3 In his petition for review, de la Cruz does not elucidate his challenges, if any, to the trial court's disposition of the remaining issues he raised below. Because the trial court's ruling correctly identified and resolved the issues in a manner that allows this court and any other court in the future to understand its resolution, we adopt the ruling and need not rehash it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 We grant review but deny relief.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge